

Message

From: Beck, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=168ECB5184AC44DE95A913297F353745-BECK, NANCY]
Sent: 6/14/2019 12:02:59 PM
To: Wittenberg, Nicholas [wittenberg.nicholas@epa.gov]
CC: Keigwin, Richard [Keigwin.Richard@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Messina, Edward [Messina.Edward@epa.gov]; Miller, Wynne [Miller.Wynne@epa.gov]; Barber, Delores [barber.delores@epa.gov]; Syed, Hamaad [Syed.Hamaad@epa.gov]; Furlow, Calvin [Furlow.Calvin@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]
Subject: Re: Equity Notification for Multiple Consultations from FWS by The Center for Biological Diversity

Thanks Nick. I guess there is nothing we can do about what FWS has already released. Not sure how to prevent this in the future.

Nancy B. Beck, Ph.D., DABT
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
P: [202-564-1273](tel:202-564-1273)
beck.nancy@epa.gov

On Jun 13, 2019, at 9:09 PM, Wittenberg, Nicholas <wittenberg.nicholas@epa.gov> wrote:

Hi Nancy,

I have attached the four pages (620-623) that were still of concern. We consulted further with FWS on the attached four pages. FWS had already released in full, pages 620-622, so we have to release as is. FWS did agree we could withhold information on page 623, since FWS personnel was discussing EPA provided information. Please see the page 623 with the deliberative information redacted.

Here is the link again to all the records. The only one that has changed since we first sent this out for equity and awareness review is "DOI Consult Doc1 and Doc2 Mtownsend 723 pages Combined_Redacted".

https://usepa-my.sharepoint.com/:f/g/personal/ingram_earl_epa_gov/E1xrxTWyWOZGk0zfTyRAa_oBDZWkqvs-TwsPBCEDp9X-Og?email=wittenberg.nicholas%40epa.gov&e=d6O9pg

FWS said we can release on Monday.

All the best,
Nick

Nicholas Wittenberg
Attorney-Advisor
United States Environmental Protection Agency
Office of Pesticide Programs
Information Technology & Resources Management Division
Public Information & Records Integrity Branch

1200 Pennsylvania Avenue, NW (MC 7502P)
Washington, D.C. 20460
Phone: (703) 347-8875
Email: wittenberg.nicholas@epa.gov

From: Beck, Nancy
Sent: Thursday, June 13, 2019 11:33 AM
To: Wittenberg, Nicholas <wittenberg.nicholas@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Ingram, Earl <Ingram.Earl@epa.gov>
Cc: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Miller, Wynne <Miller.Wynne@epa.gov>; Barber, Delores <barber.delores@epa.gov>; Syed, Hamaad <Syed.Hamaad@epa.gov>; Furlow, Calvin <Furlow.Calvin@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>
Subject: RE: Equity Notification for Multiple Consultations from FWS by The Center for Biological Diversity

Thank you for following up.
Thanks Rick for the quick look.

- <!--[if !supportLists]--><!--[endif]-->
>
- <!--[if !supportLists]--><!--[endif]-->Nancy B. Beck, Ph.D., DABT
- <!--[if !supportLists]--><!--[endif]-->Principal Deputy Assistant Administrator, OCSPP
- <!--[if !supportLists]--><!--[endif]-->P: 202-564-1273
- <!--[if !supportLists]--><!--[endif]-->beck.nancy@epa.gov

From: Wittenberg, Nicholas
Sent: Thursday, June 13, 2019 11:15 AM
To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Ingram, Earl <Ingram.Earl@epa.gov>
Cc: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Miller, Wynne <Miller.Wynne@epa.gov>; Barber, Delores <barber.delores@epa.gov>; Syed, Hamaad <Syed.Hamaad@epa.gov>; Furlow, Calvin <Furlow.Calvin@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>
Subject: RE: Equity Notification for Multiple Consultations from FWS by The Center for Biological Diversity

Thanks Nancy and Rick for you responses and input.

Based on Rick's comment's, there are only a couple of documents of concern.

DOI Consult Doc1 &2

We can contact FWS to see if they would consider withholding the information in pages 620-623. The emails and chart appear to be a logistical evaluation of tools used for a routine process. There is a possibility they have already released this material previously, therefore would have to release it again.

For Binder EPA and USDA8

Pages 22-32- The are publicly available on the Senate's website
at <https://www.agriculture.senate.gov/download/testimony/mr-keigwin-testimony>

Pages 33-45. FWS is going to redact pages 35-45 prior to releasing regarding Ricks draft response to the QFRs and Calvin Furlow conferred for EPA. See screenshot of the notes. The internal FWS email on pages 33-34 forwarding Rick's draft response, has nothing that needs redacting.

<image001.png>

Additionally, CBD has noted in a number of multi-agency FOIAs and litigation that FWS has been more forthcoming.

Let me know if there are any additional questions.

Thank you,
Nick

Nicholas Wittenberg
Attorney-Advisor
United States Environmental Protection Agency
Office of Pesticide Programs
Information Technology & Resources Management Division
Public Information & Records Integrity Branch
1200 Pennsylvania Avenue, NW (MC 7502P)
Washington, D.C. 20460
Phone: (703) 347-8875
Email: wittenberg.nicholas@epa.gov

From: Keigwin, Richard
Sent: Thursday, June 13, 2019 9:39 AM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Wittenberg, Nicholas <wittenberg.nicholas@epa.gov>; Ingram, Earl <Ingram.Earl@epa.gov>
Cc: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Miller, Wynne <Miller.Wynne@epa.gov>; Barber, Delores <barber.delores@epa.gov>; Syed, Hamaad <Syed.Hamaad@epa.gov>; Furlow, Calvin <Furlow.Calvin@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>
Subject: RE: Equity Notification for Multiple Consultations from FWS by The Center for Biological Diversity

I took a quick look at the 3 files highlighted:

In DOI Consult Doc1 &2

- **pages 621/622**
 - These pages appear to be emails between FWS staff as part of their analysis/reading of the biological evaluation that we submitted to them in January 2017 to initiate the formal consultation for chlorpyrifos, diazinon, and malathion. The dialogue appears to be a discussion of how they are interpreting our analyses. I don't know what the practice has been within FWS for consideration of internal deliberations on a Biological Opinion that has yet to be issued.

Binder EPA and USDA8

- Pages 5-8
 - These appear to be EPA comments on the draft responses to the QFRs that USDA received as a follow-up to the Senate Ag hearing on PRIA reauthorization. I don't know what the practice has been in FOIA regarding interagency comments on draft QFRs prior to submitting final responses to the Senate. That being said, I don't see any concerns if the EPA comments were to be released
- Pages 11-21
 - These appear to be my draft responses to the QFRs I received as a follow-up to the Senate Ag hearing on PRIA reauthorization. I wasn't able to compare these to what was ultimately provided to the Senate. Based upon a quick read, I don't see any concerns if these were released, but it would seem that the process followed should be whatever the process is under FOIA for drafts of QFR responses in general.
- Pages 22-32
 - This appears to be a draft of my testimony for the Senate hearing on PRIA reauthorization. My comments are the same as above for pages 11-21.
- Pages 33-45
 - These appear to be FWS comments on my draft responses to the QFRs I received as a follow-up to the Senate Ag hearing on PRIA reauthorization. My comments are the same as above for pages 11-21 and pages 22-32.

Binder EPA and NOAA 26

- Pages 37/44/51 (same table, 3 different times)
 - This appears to be a table that was developed during interagency discussions as we prepared for a settlement discussion with plaintiffs in an ESA case. All of the dates are in the past.

From: Beck, Nancy

Sent: Thursday, June 13, 2019 8:53 AM

To: Wittenberg, Nicholas <wittenberg.nicholas@epa.gov>; Ingram, Earl <Ingram.Earl@epa.gov>

Cc: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>;

Messina, Edward <Messina.Edward@epa.gov>; Miller, Wynne <Miller.Wynne@epa.gov>; Barber,

Delores <barber.delores@epa.gov>; Syed, Hamaad <Syed.Hamaad@epa.gov>; Furlow, Calvin

<Furlow.Calvin@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>

Subject: RE: Equity Notification for Multiple Consultations from FWS by The Center for Biological Diversity

Thanks Nick.

While some of this is other agencies emails, I still feel like they could impact our program.

Rick/Ed/Wynne- for the ones I've highlighted below, can one of you take a quick look to confirm that release of these emails wont cause trouble for us (eg if comments impact us or schedules were not met)?

Thanks.

Nancy B. Beck, Ph.D., DABT

Principal Deputy Assistant Administrator, OCSP

P: 202-564-1273

beck.nancy@epa.gov

From: Wittenberg, Nicholas

Sent: Wednesday, June 12, 2019 4:17 PM

To: Ingram, Earl <Ingram.Earl@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Miller, Wynne <Miller.Wynne@epa.gov>; Barber, Delores <barber.delores@epa.gov>; Syed, Hamaad <Syed.Hamaad@epa.gov>; Furlow, Calvin <Furlow.Calvin@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>
Subject: RE: Equity Notification for Multiple Consultations from FWS by The Center for Biological Diversity

Hi Nancy,

The records were a bit confusing, because FWS does their redactions differently from us. They do not use the redaction tool in Adobe to highlight and show proposed redactions like we do. They have note their redactions with sticky notes, which they will remove before releasing.

Also, they are light years behind us and do not have Relativity. DOJ has external facing Relativity which makes these multi agency reviews more efficient and accurate while reducing a number of steps.

In DOI Consult Doc1 &2.....: there seems to be a lot of deliberative information and about 3-4 sets of spreadsheet results. Are these all deliberative? Could someone make something out of them. Also on pages 621 and 622 we talk about specific findings—I think these are all draft. The spreadsheets appear factual and do not appear to be anything we should without. Pages 621-623 are from an internal email between FWS staff, it's their comments, therefore, it's their call to release or to withheld.

In Consult with EPA 77.....: there seem to be a few copies of formal letters between EPA and FWS. I presume since they are final they are releasable, but can they perhaps be considered interagency deliberative? These letters were previously released by FWS. They were cited and attached to FOIA requests submitted by CBD to OPP.

Binder of Consults to EPA 23.....: there are some sticky notes on the file that say things should be redacted—see for instance page 27—however I don't see any redactions; pages 57-62 seem to be deliberative comments; Page 27 FWS will redact this information prior to release. . Calvin Furlow added a sticky note to alert FWS that they had previously marked this material to be withheld. Pages 57-62 was already released to an outside party; Wiley Rein see Phil Villanueva's email on page 55.
<image002.jpg>

Binder EPA only Set 28.....: pages 7-19 should be withheld. It's hard to read the FWS stickies on their plan. It is being withheld in full. This information will be redacted by FWS. There was a note from Calvin Furlow conferring that EPA agrees. See snapshot
<image003.jpg>

Binder EPA and USDA8.....: pages 5-8 should be withheld; pages 11-32 look like they were circulated for review- pls confirm they are final before releasing; page 35-45 should be withheld. All these pages are from an internal email between FWS staff, it's their comments, therefore, its their call to release or to withheld.

Binder EPA and NOAA 26....: are pages 37, 44, 51 deliberative? This schedule on all 3 pages, was sent by email between NOAA/NMFS and FWS. EPA was not included in the chain, it's the call of the other Agencies to release.

Binder EPA and NOAA and USDA....: pages 56- 163 should be withheld completely. It is being withheld in full. This information will be redacted by FWS. There was a note from Calvin Furlow conferring that EPA agrees.

<image004.jpg>

Excel spreadsheet- what is this?? – They appear to FWS spreadsheets are appearing to be factual.

Please let me know if you have any additional questions.

Thank you,
Nick

Nicholas Wittenberg
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United States Environmental Protection Agency
Office of Pesticide Programs
Information Technology & Resources Management Division
Public Information & Records Integrity Branch
1200 Pennsylvania Avenue, NW (MC 7502P)
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Email: wittenberg.nicholas@epa.gov

From: Ingram, Earl
Sent: Monday, June 3, 2019 8:47 AM
To: Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Wittenberg, Nicholas <wittenberg.nicholas@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Miller, Wynne <Miller.Wynne@epa.gov>; Barber, Delores <barber.delores@epa.gov>; Syed, Hamaad <Syed.Hamaad@epa.gov>; Furlow, Calvin <Furlow.Calvin@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>
Subject: Re: Equity Notification for Multiple Consultations from FWS by The Center for Biological Diversity

Nancy,

Thanks for looking at all these records. I'll look at the documents when I get in this morning. I have an appointment this morning, but should be in around 11:00. Nick is out today on his normal compressed day off.

FWS has already reviewed the documents, so any document that originated from their office, they were planning on releasing, if they haven't already.

Earl Ingram, Chief
Public Information & Records Integrity Branch
Information Technology & Resources Management Division
Office of Pesticide Programs
U.S. Environmental Protection Agency
(703) 305-5456

Sent from my iPhone

On Jun 3, 2019, at 7:30 AM, Beck, Nancy <Beck.Nancy@epa.gov> wrote:

Thanks to the team for this. I reviewed the files this weekend
A few comments:

- In DOI Consult Doc1 &2....: there seems to be a lot of deliberative information and about 3-4 sets of spreadsheet results. Are these all deliberative? Could someone make something out of them. Also on pages 621 and 622 we talk about specific findings—I think these are all draft.
- In Consult with EPA 77....: there seem to be a few copies of formal letters between EPA and FWS. I presume since they are final they are releasable, but can they perhaps be considered interagency deliberative?
- Binder of Consults to EPA 23.....: there are some sticky notes on the file that say things should be redacted—see for instance page 27—however I don't see any redactions; pages 57-62 seem to be deliberative comments;
- Binder EPA only Set 28....: pages 7-19 should be withheld. Its hard to read the FWS stickies on their plan.
- Binder EPA and USDA8....: pages 5-8 should be withheld; pages 11-32 look like they were circulated for review- pls confirm they are final before releasing; page 35-45 should be withheld.
- Binder EPA and NOAA 26....: are pages 37, 44 , 51 deliberative?
- Binder EPA and NOAA and USDA....: pages 56- 163 should be withheld completely.
- Excel spreadsheet- what is this??

Many thanks,
Nancy

Nancy B. Beck, Ph.D., DABT
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
P: 202-564-1273
beck.nancy@epa.gov

From: Wittenberg, Nicholas
Sent: Tuesday, May 28, 2019 8:48 AM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>
Cc: Keigwin, Richard <Keigwin.Richard@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Miller, Wynne <Miller.Wynne@epa.gov>; Barber, Delores <barber.delores@epa.gov>; Syed, Hamaad <Syed.Hamaad@epa.gov>; Ingram, Earl <Ingram.Earl@epa.gov>; Furlow, Calvin <Furlow.Calvin@epa.gov>
Subject: Equity Notification for Multiple Consultations from FWS by The Center for Biological Diversity

Good Morning Nancy, Charlotte, and Erik,

We are in the processing of a responding from a FOIA Consultation from The United States Fish and Wildlife Service (FWS) in response to FOIAs they have received from The Center for Biological Diversity (CBD).

Before we send out the Awareness Notification Email under the new guidelines as detailed in the FOIA Efficiency Memo we are sending this OCSPP Equity Notification Email.

I. Scope of the Request:

The attached Consultation letters from FWS identify the content CBD is seeking. Since OPP in EPA has equities in this emails and documents FWS has reached out to us to see if they can be released.

II. Description of the Production:

This proposed production includes **13 documents**, with a total of **2,500 pages**. They have both FWS redactions (Black Background/Red Text) and EPA Redactions (Black Background/White Text).

Please find the link below for the production:

https://usepa-my.sharepoint.com/:f/g/personal/wittenberg_nicholas_epa_gov/Em-oK4Xs7ApFkjE81Dg8dHAB2Zv6gzzO2CpTEMqKBmL0nQ?e=VCvswr

III. Deadline for Review:

This matter is scheduled for production **06/15/2019**. Thus, please provide me with your final comments on the proposed production by **06/12/2019**, so that we can then send of the Awareness Review Email to the entire identified group.

Please let me know if you have any questions.

Thank you,
Nick

Nicholas Wittenberg
Attorney-Advisor
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Office of Pesticide Programs
Information Technology & Resources Management Division
Public Information & Records Integrity Branch
1200 Pennsylvania Avenue, NW (MC 7502P)
Washington, D.C. 20460
Phone: (703) 347-8875
Email: wittenberg.nicholas@epa.gov

<Pages 620-623 from DOI Consult Doc1 and Doc2 Mtownsend 723 pages Combined_Redacted-2.pdf>